

March 31, 2006

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Dear Secretary Dortch:

RE: CC Docket No. 02-6

In accordance with 47 C.F.R. §1.1206, the Virginia Department of Education files this notice of ex parte presentation to the Commission.

On Thursday March 30, 2006, Lan Neugent and Greg Weisiger from the Virginia Department of Education met with Thomas Navin and Thomas Buckley of the Wireline Competition Bureau to discuss several pending appeals before the Commission. A synopsis of the appeal issues is included with this correspondence. All material referenced is publicly available via Commission filings.

In addition to the appeals listed here, we discussed a recent denial of an invoice submitted to the Schools and Libraries Division (SLD) by Shentel Telephone Company for Harrisonburg Virginia Public Schools. The SLD had reduced the authorized discount rate for Harrisonburg without notification or further review with Harrisonburg.

We expressed concern that the SLD has established an Invoice Review Team that is denying or reducing payment to applicants in violation of the SLD's own Commitment Adjustment (COMAD) procedures, Commission regulations, and denying applicants due process under the law. We indicated that the Shentel denial is one of dozens of payment denials or reductions initiated by the Invoice Review Team.

Finally, we suggested a formula funding approach for Internal Connection funding outlined in comments submitted by Greg Weisiger under the Commission's Comprehensive Review of Universal Service Fund Management and Oversight, WC Docket Number 05-195.

Sincerely,

Greg Weisiger
Virginia Department of Education

CC: Mr. Thomas Navin
Mr. Thomas Buckley

**Presentation to the Federal Communications Commission
by the
Virginia Department of Education
March 30, 2006**

Appeals

**Virginia Department of Education Petition for Reconsideration
Filed May 20, 2002**

Application denied because SLD ruled Autotote Communications was not a Common Carrier despite having funded services from Autotote in Year One.

DOE filed initial appeal to FCC arguing Autotote met the test for Common Carrier status for E-Rate under the Iowa Decision, FCC 00-449. DOE dedicated the balance of the appeal countering the Joplin Decision DA 99-2798, arguing that listing of “PRIV” on FCC Form 498 should not be grounds for exclusion as a Common Carrier under E-Rate.

Joplin was the precedent case at the time and categorically excluded companies listing “PRIV” from receiving Universal Service compensation.

The Wireline Competition Bureau denied the initial appeal in DA 01-1123 ruling that it was unable to locate supporting documentation from SLD files and the WCB review of the Autotote Website indicated Autotote was not a Common Carrier. The WCB dismissed the Joplin argument saying that the “SLD will investigate in order to determine whether the service provider offers service on a common carriage basis.” Because Joplin was the precedent decision of the day, DOE and the public in general were unaware of subsequent communication between the FCC and SLD allowing SLD to investigate further and is thus able to provide additional clarifying information through a Petition for Reconsideration.

Petition for Reconsideration produced supporting documentation that was in SLD possession at time of initial appeal and additional proof that Autotote provided interstate telecommunications services on a common carriage basis

at the time of the E-Rate funding application. DOE also provided the FCC with a list of companies providing interstate telecommunications services that were not contributing to the Universal Service fund.

Solution: Grant Petition for Reconsideration and remand to SLD

Buckingham Public Schools
Filed December 20, 2005

Buckingham filed Form 486 within 120 days of FCDL. The 120th day was a Saturday. The Form 486 was postmarked on April 4, 2005, the first business day after the 120th day.

SLD denied appeal because it was filed outside the 60 day appeal window. SLD used the date of the 486 notification letter as the start of the appeal clock. Like Glendale, DA 06-244, the service start date adjustment was not discovered until after the filing of the Form 472, long after the 486 notification letter and SLD's computation for the start of the appeal window. The Glendale decision did not address the untimely appeal, effectively acknowledging that the Form 486 notification letter does not start the appeal clock, rather, the fund reduction or fund denial letter would constitute proper notification.

Like Glendale and noted in the Decision, Buckingham adhered to the core program requirements by filing a timely Form 486, requesting discounts on reasonable services procured competitively, and properly complied with all Commission rules.

Because the service start date was adjusted, the Form 472 was denied because Buckingham used July 1 as the start date. This date was before the new start date and therefore was returned as defective. By the time notification of the denial was received by Buckingham, the SLD invoice deadline date had passed.

Solution: Grant appeal on grounds that the appeal clock did not start until denial of Form 472 filing and original Form 486 was timely filed. Alternatively, like Glendale, waive the "relevant Commission rules and procedures" to ensure Buckingham receives Year 2004 E-Rate discounts.

Charlottesville City Public Schools
Filed March 14, 2005

Denied funding on May 11, 2004 because “Technology plan does not cover the funding year...” Charlottesville had a draft plan, written prior to filing the Form 470 that covered the entire fund year. The plan was approved by the Virginia DOE prior to July 1, 2004.

The Commission in the Fifth Report and Order specifically granted a waiver for applicants in Charlottesville’s situation: “We hereby grant a waiver...to all applicants that failed to have a technology plan approved at the time they filed their FCC Form 470 or that had obtained approval of a technology plan that covered only part of the funding year, but that obtained approval of a plan that covered the entire funding year before the commencement of service in the relevant funding year.”

Solution: Grant appeal based on the Fifth Report and Order.

King and Queen Public Schools Petition for Reconsideration of Commission Decision
Filed February 28, 2004

King and Queen filed for Year Three discounts within the filing window. The application was rejected for failure to meet minimum processing standards. Specifically, omission of Block 1, Item 1 **and** omission of Item 22. King and Queen appealed to the Common Carrier Bureau.

The Common Carrier Bureau denied the appeal ruling that while Item 22 clearly fell under the conditions of the Naperville decision, the Block 1, Item 1 omission did not. Therefore the appeal was denied.

King and Queen appealed to the full Commission arguing that the intervening Asociacion de Educacion decision, DA 01-2290, and the Methacton decision reversed Block 1, Item 1 as a reason for Form 471 rejection.

The full Commission indicated tacit approval of Block 1, Item 1 reversal but denied the appeal because Item 22 was not addressed in the appeal before the Commission.

King and Queen filed a Petition for Reconsideration contending that the Item

22 issue had been decided at the Bureau level and should not be revisited by the full Commission. The Commission need only rule on Block 1, Item 1.

Solution: Grant appeal.